

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)
Dinuba)
Unified School District)
and)
California School)
Employees Association)
Chapter #152)
_____)

Re: Case No. SA-IM-3129-E

Impartial Chair

Bonnie Prouty Castrey
Post Office Box 5007
Huntington Beach, California 92615

District Panel Member

John D. Gray, Vice President
School Services of California
1121 L Street, Suite 1060
Sacramento, California 95814-3926

Association Panel Member

Raul Perez, Labor Relations Representative/Organizer
California School Employees Association
2501 West Shaw Avenue, Suite 107
Fresno, California 93711

Hearings Held

December 9-10, 2010
February 28, 2011
Dinuba Unified School District Offices
1327 E. El Monte Way
Dinuba, CA 93618-1825

BACKGROUND

Dinuba Unified School District (District, DUSD or Employer) and the California School Employees Association Chapter #152 (Association or CSEA), a local affiliate of the California School Employees Association (CSEA or Association), are the parties in this fact finding proceeding. The classified staff in this bargaining unit are members of CSEA. They are nine to twelve month hourly employees depending on their classification and hours/days of assignment.

The Collective Bargaining Agreement (CBA) is 2006-2009 and had one revision 10/17/07 (Association Facts (AF, Tab B), therefore this is negotiations for a successor CBA. Because of the decreased state funding to school districts statewide and to this District specifically, the District sought concessions from all employees in the District. The specifics of those concessions will be discussed below. The Chair's understanding is that the parties have tentatively agreed on all items except the amount of the Health and Welfare cap and the District and employee contribution to Public Employees Retirement System (PERS).

The parties engaged in direct negotiations for approximately eight (8) sessions between March of 2009 and February 2010. The Public Employment Relations Board (PERB) declared an impasse on or about March 11, 2010 and State mediator Joseph Rios was assigned to assist the parties in mediation. He met with the parties on about four occasions between April and August, 2010. September 15, 2010,

he certified the parties to Fact Finding.

The Association selected Raul Perez, Labor Relations Representative/Organizer, as the Panel member and the District selected John Gray, Vice President of School Services of California to represent them on the Panel. Together they selected Bonnie Prouty Castrey, from the PERB Panel of Neutrals to Chair this Panel and conduct the proceedings. The Chair was notified of her selection on or about September 27, 2010.

CSEA has filed Unfair Labor Practice charges regarding the bargaining. Those charges are pending before PERB and will not be dealt with by this Panel as they are not within our jurisdiction.

In Fact Finding, the District declared that it has an Inability to Pay the ongoing rates of total compensation. The issues before this Panel are 1) Inability to Pay, 2) the amount of the Health and Welfare cap and 3) whether employees shall pay a portion of the PERS.

The Panel met in a conference call on November 16, 2010 to discuss the issues before us and the procedures for assisting these parties. As the District is claiming Inability to Pay, they have the burden of proof and would present their facts first. Following a break and clarifying questions by the CSEA, the CSEA would present their facts and following another break, the District would ask any clarifying questions.

As agreed, at the hearing conducted on December 9 and 10, 2010 both parties presented their documentation and facts regarding the

issues before the Panel. The Panel Members then attempted to help the parties to reach a mediated settlement in Fact Finding. When the parties were not able to resolve their dispute early on December 12, 2010, the Panel decided to schedule a second set of dates on February 27 and 28, 2011, to continue the Fact Finding mediation settlement efforts. That second effort was not fruitful; therefore, the Panel Members studied both party's voluminous submissions thoroughly and the Chair drafted this Report and Recommendations.

In this matter, the Panel is guided by the California Government Code Section 3548.2 of the EERA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following criteria:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.
7. Such other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the

findings and recommendations."

ADDITIONAL PERTINENT STATE LAWS

Government Code Section 3547.5

- (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.
- (b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.
- © If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

STIPULATIONS OF DUSD AND CSEA

- 1. The Dinuba Unified School District is a public school employer within the meaning of Section 3540.1(j) of the Educational Employment Relations Act.
- 2. The California School Employees Association is a recognized employee organization within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of the classified non-management bargaining unit of the Dinuba unified School District.
- 3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)
- 4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.

5. The parties have complied with all the requirements for selection of the factfinding panel and have met or made the statutory time limitations applicable to this proceeding.
6. The contract issues which are appropriately before the Factfinding Panel are as follows:

Article VIII: Pay and Allowances
8.11 PERS Contribution and Tier Option

Article XI: Health and Welfare Benefits
11.1 Permanent Insurance Cap
District's Contribution for 2010/2011 year
11.5 District contribution for 2010/2011 year
7. An impasse in bargaining was declared by the Public Employment Relations Board on or about March 11, 2010. The mediation process proceeded, and the parties continued to meet with the mediator in an effort to reach agreement until September 15, 2010, when Mediator Joseph Rios indicated that he had been unable to effect a settlement and he believed that factfinding would be an appropriate step to resolve the impasse.
8. The factfinding chairperson, Bonnie Castrey, was notified of her assignment by PERB on or about September 27, 2010.

COMPARISON DISTRICTS

The District used four (4) districts for comparison purposes. They are K-12 districts in the area and 95% of the CSEA members live in these districts including the fact that 77% live in Dinuba. The four (4) comparison districts are:

Cutler-Orosi Joint Unified
Kings Canyon Joint Unified
Selma Unified and
Visalia Unified. (DF Description and Comparability)

The CSEA compared itself to Exeter Union High School District and Exeter Elementary School Districts with portions of the CBA's from 1985-1991 (AE F, K).

The Chair will use the unified comparison districts which the District compared to as the Association did not submit a set of comparison districts that are current.

The following is a discussion of the outstanding issues with recommendations.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The issue which must be addressed first is the question of inability to pay.

When a district asserts inability to pay, they have the heavy burden of proving that they cannot afford to continue paying at the level they currently are compensating employees and/or that they cannot afford to negotiate increases in total compensation. In the matter before the Panel, we are addressing the Health and Welfare cap and the PERS contribution.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2010-2011, which commenced July 1, 2010 and ends June 30, 2011, must have a positive ending balance and a minimum three percent reserve (3%). In addition, FY 2011-2012 and FY 2012-2013 must also be able to show a positive ending balance. In this matter, FY 2009-2010 is already history and 2010-2011 is nearly completed, therefore the Panel will also have to consider 2013-2014

so as, to comply with the State law, the District has to adopt a balanced budget on or before June 30, 2011 for the 2011-2012 school year and two successive years, through June 30, 2014.

Schools in California are dependent on the State of California for the majority of their revenue to educate students. The State is and has been in fiscal "meltdown" for several years since at least 2007. Some economists have described California's budget as being in "free fall".

As a result of the State budget shortfall due to decreased sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by literally billions of dollars. For this District this amounts to about 22% in the 2009-10 fiscal year (FY) decrease in per pupil funding in unrestricted funding and restricted (categorical) funding. In the 2010-11 FY the decrease was about 18% (DF pg 123). Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), DUSD would have received in the 2009-2010 FY, \$6,690.00 for each student attending class each day (Average Daily Attendance or ADA). Because the State decreased its full funding of the BRL, the District received only \$5,209.00, a difference of \$1,481.00 equal to a 22.19% decrease in funding. In FY 2010-2011, the DUSD should have received \$6,665.00, however, according to the current State budget, adopted on October 8, 2010, the State will only fund the BRL at \$5467.00 per ADA. This represents a \$1,198.00 deficit, equal to 18.1%. This deficit factor

means that for every one dollar this District should receive for each student who attends class each day, it is only receiving about 82 cents! (District Facts [DF] Inability to Pay tab 12).

There is no question that these are huge losses in unrestricted revenues. The District is spending down its reserves and is therefore deficit spending. In plain English the District is spending more than it is receiving. As reserves are only one time monies, this is very serious. The District took action to severely cut its costs through position reductions in both classified and certificated employees. They have also made program reductions.

Additionally, as the State has authorized flexibility in the use of some categorical funds for their use in the general fund, the District has used this flexibility, known as "Categorical Sweeps" of Tier III programs in order to mitigate some of the draconian personnel cuts other districts have had to make and which this District would have had to make without using that flexibility. The total revenue "swept" from the categorical funds to the general fund in both one time and on-going funds is about 1.7 million dollars. They also have an unfunded health and welfare retiree liability of some eleven (11) million dollars (DF Tab 11-18 pages 95-149).

This District's total expenditure for staff compensation is 86.98% which places it above the average of the comparison group of 86.72% but below Visalia USD which spends 90.74%. This places them second when compared to similarly situated districts. The range is from 81.62% to 90.74%. (DF Tab 3, pg 33).

When the classified salaries are compared to amount per each ADA, DUSD is second and first in relation to the comparison districts in unrestricted classified salaries (DF Tab 2, pgs 30-32).

Absent a negotiated agreement for concessions from this bargaining unit in the 2009-2010 school year, the District reduced hours and laid off staff but they have not proposed furlough days or reductions in salaries.

Because the District implemented the staffing and program reductions and took advantage of the categorical sweeps, they have maintained in excess of the 3% reserve for economic uncertainty but continue to spend down their reserves (DF 14). Based on the State's decreased allocation of dollars per ADA to this District, in August, 2009 the District was warned by the Tulare County Office of Education (TCOE) that the District had to make budgetary reductions of some 3.6 million dollars in order to avoid ending FY 2009-2010 with a negative unrestricted fund balance of 2.2 million dollars. The District recognized that to remain solvent they had to implement a plan for both short and long term savings. The short term have been discussed.

Long term, the District had two Certificates of Participation (COPS) which it was paying from the unrestricted general fund. They paid one and continue to have debt service on the second one (DF 11, pgs 98-102).

During the 2009-10 and 2010-11 FY's the District has had one time Federal monies from the American Reinvestment and Recovery Act

(ARRA) and Federal Stabilization Funds of about 2.2 million dollars, which has helped them through these two years. Those funds are not available going forward and current allocations must be spent by August 2011. (DF 11, pgs 98-122).

Because of TCOE's ongoing concerns regarding the District's budget, they have met regularly in the 2009-10 and 2010-11 school years with District officials to monitor the budget. (DF 11).

The District also has an unfunded liability for retiree medical benefits of some eleven (11) million dollars. The actuarial study recommends that the District should be funding this benefit at about 1.5 million dollars each year (DF Tab 18, pg 136-145).

Enrollment in this District and ADA appear to be flat (AF C pg 1). The Association in its analysis of the budget shows the total ending balance growing from 11.2% in 2003-2004 to 19.7% in 2009-2010 (AF C, pg 10).

The Chair notes that the total ending balance at the end of any school year includes carryover funds from school sites as well as any fund balances. Significantly these figures also appear to include the restricted categorical funds as well as the general fund monies. The 2010 ending balance would also contain the unspent ARRA, one time federal monies as the California Department of Education did not pass through those monies to districts till June of 2010. Additionally, three factors, all as a result of State actions need to be noted:

- 1) The State failed to complete legislative action to reduce

district funding prior to June 30, 2009. The funding therefore, remained in the District's ending fund balance on June 30, 2009. Subsequently, in July 2009 after a special legislative exemption was passed and signed by then Governor Schwarzenegger, it was removed. This amounted to approximately 1.5 million dollars for DUSD.

2) The State, for the first time, distributed categorical funds subject to flexibility as unrestricted dollars.

3). The unplanned Federal Stimulus dollars were distributed by the California Department of Education in June 2009, which was too late for the District to spend them before June 30, 2010.

Except for the Tier III flexibility, which is currently provided through June 30, 2013 when that flexibility expires unless extended by the Legislature and Governor and which is currently proposed to be extended by Governor Brown, categorical funds must be used only for their designated purpose. In other words, the flexibility is time limited.

As stated above, the District, by law, must show a positive ending balance and a district this size should have at least a 3% reserve for fiscal uncertainty in the ending balance. Hence, going forward three years through 2013-2014, the District must show that the ending balances in 2011-2012, 2012-2013 and 2013-2014 meet at least that 3% reserve for economic uncertainty. Otherwise, the TCOE which reviews their budget will certify them either qualified or in the worst case, negative. At that point, a district has an outside fiscal advisor assigned to assist them in budgeting and in the most

severe cases the state takes over the fiscal matters of the district. Clearly, good fiscal management is in both the District's and the Association's interest, as the cost of mismanagement is the loss of local control which is not in either party's interest.

Further, under State law, the Education Code at Section 3547.5 provides that the superintendent of the district and the chief business official must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and therefore they cannot certify the continuation of the terms of this CBA and meet the requirements of the law.

CSEA argues vehemently that the District is asking for substantially more concessions than are necessary from this unit and further, that the District does in fact have substantial reserves as discussed above. From the Chair's study of the budget documents, it is a fact that the District is spending down its general fund reserves and is therefore in deficit spending. This is not sustainable, as it will lead to a negative certification and insolvency.

Moreover, while the Governor has proposed no further decreases to the K-12 base revenue limit, in other words flat funding, going into the 2011-12 FY, the legislature has not passed a budget. Furthermore, while there has been much talk about placing a measure on the ballot to extend some taxes, at this writing, that has not

been settled and without a revenue stream, K-12 may face additional funding cuts from the state.

Based on the foregoing and taking into consideration both parties voluminous set of facts and arguments, the Chair finds that the District has met its heavy burden of proof and has shown that it does have an inability to continue to pay this bargaining unit long term, at the current total compensation in the CBA.

The next question is how to address this critical matter fairly through the two issues before the Panel and maintain the parties ability to effectively maintain and increase support services for students in order to deliver the educational programs of the District to the students they serve. Maintaining the educational programs is crucial as this District and bargaining unit of Classified professionals service a very diverse student population as identified in District's presentation (DF, District Description and Comparability pgs 2-7).

HEALTH AND WELFARE

Health and welfare benefits remain a problem in terms of the increasing costs of health care premiums. The District points out that for a regular full time employee who works five days a week and an eight hour day for at least a full term, the District provides capped health care coverage including medical, dental, vision and prescription. This is a capped benefit and employees pay the difference depending on their chosen plan. However, this District has consistently paid above the cap in order to pay the cost of the

benefit plans.

The current cap in the CBA is \$9194.00 annually.

The District proposes that the contractual cap remain at \$9194.00 and the Association proposes that the cap be increased to \$9371.60 along with the PERS Issue being resolved. It is important to note that during FY 2009-10, the District paid \$10,371.60 annually. Subsequently, the parties agreed to benefit changes in the four plans, so that in 2010-2011, the District is paying \$9672.63 annually. Those amounts in both years are over the negotiated cap in the CBA and the parties agree that the District has paid above the contractually stated cap since the cap was negotiated (Appendix A DF, Pgs 12-13).

PERS CONTRIBUTIONS

By terms of the CBA, the District currently pays the District and the full employee contributions to PERS. The employee contribution is 7%. The District proposes that if the PERS contribution in any one year should exceed 18%, that the employee pay the difference up to 7%. Further, they propose that new employees eligible for PERS, pay the full 7% contribution.

The Association proposes that the District pay up to 18.707% for all employees in the bargaining unit who are eligible for coverage. They argue vehemently against a two tier system, wherein new employees will pay the full employee contribution of 7%.

(Chair's notes)

Historically in 1987-88 and 1988-89, the parties reached an

agreement for a one time cash payment to employees rather than a salary schedule increase, in exchange for employees who are covered by PERS having their PERS contribution paid by the District. Employees who were not eligible for PERS received a higher cash payment.

The language states:

SALARY RESOLUTION FOR 1987/88 and 1988/89:

For those employees covered by PERS: a 2.5% cash bonus paid 2/29/88 on earnings from 9/1/87 through 1/31/88. In addition, effective 3/1/88, the District will "pick-up" 100% of the employee contribution to PERS.

For those employees NOT covered by PERS: a 4% cash bonus shall be paid in June 1988 for earnings of the 1987/88 year and an additional 4% cash bonus to be paid in June 1989 for earnings of the 1988/89 year.

For all employees: Salaries only shall be reopened for the 1989/90 year. (AF J)

Based on this language, for the one time off schedule payment of 2.5%, the CSEA argues that they bought the employee payment of their 7% PERS contribution because otherwise the 2.5%, or any other negotiated amount in those negotiations would have gone onto their salary schedule and been paid into the future and compounded over the years. (Chairs notes).

The CSEA certainly has a point that over the years their salaries would have been higher had they negotiated for all monies to be applied on the salary schedule rather than the one time cash bonus. The Chair notes, however, that over that same period of time, the members have received a continuing substantial benefit in not paying up to 7% of their salary into PERS.

RECOMMENDATIONS

Considering that the 2009-2010 fiscal year is completed, the Chair has no ability to recommend changes in the PERS contributions in that FY and the District already paid Health and Welfare Benefits, as previously stated, above the negotiated cap, at \$10,371.60. The contract should so reflect the actual amount paid in Article 11.5.

Going forward the Chair recommends that the language in Article 11.1 be amended to increase the cap on Health and Welfare to \$9371.60 which is the amount the District and Association had discussed and the amount shown in the Association's submission to PERB.

The language in 11.5 should accurately reflect that the District paid \$10,371.60 for FY 2009-2010 and \$9672.63 for FY 2010-2011. The parties have agreed to re-open this article for the 2011-2012 FY.

Further regarding the Health and Welfare, the Chair recommends that the parties seriously consider participating in joint labor management training for their Benefits Committee. This is provided at no training costs, except employee release costs for school districts and the unions representing the employees. The training is in four modules which address the management of health care costs and educates parties regarding issues and what to look for in plans. This training is offered by the California Education Coalition for Health Care Reform (CECHCR), which is a coalition of labor and

management representatives including CSEA, ACSA and CSBA.

Regarding the PERS contributions, the Chair recommends that the parties agree that for current employees who have PERS, that the District pay up to 18% and if the PERS contribution in any year exceeds 18%, that employees pay the difference.

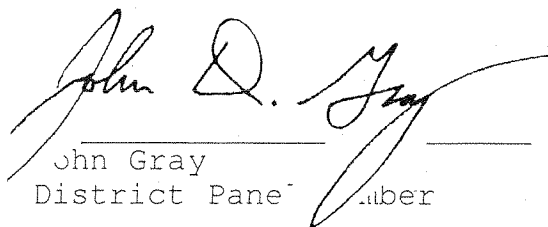
Further, that all new hires as of July 1, 2011, pay the full employee contribution of 7%.

The Panel Members representing the District and Association have met in Executive Session by conference call on June 7, 2011. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

 X Concur

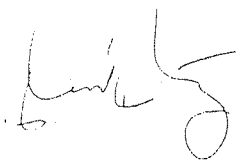
 Dissent


John Gray
District Panel Member

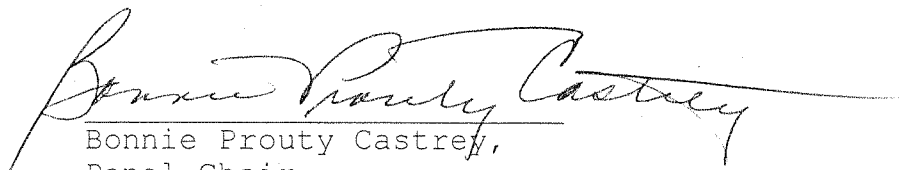
For the Association:

 Concur

 X Dissent


Raul Perez
Association Panel Member

Issued on June 10, 2011 by


Bonnie Prouty Castrey,
Panel Chair